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C O N F I D E N T I A L SECTION 01 OF 03 PRAGUE 000499

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TAGS: [EZ](#) [KDEM](#) [KJUS](#) [PGOV](#) [PREL](#)
SUBJECT: CZECH JUSTICE SYSTEM: INCOMPLETE REFORMS

REF: A. 07 PRAGUE 1234
[1](#)B. 07 PRAGUE 1131

Classified By: A/POLEC COUNSELOR MARTINA STRONG FOR REASONS 1.4 (B) AND (D).

[1](#)1. (C) Summary: Almost 19 years after the Velvet Revolution, the Czech Republic's Communist past continues to hamper its justice system. A lack of transparency, lengthy legal proceedings, dependence on the executive branch, and a considerable number of "old regime" judges are all problems that have persisted, despite numerous reform attempts since [1](#)1989. The latest reforms proposed by Minister of Justice Jiri Pospisil are aimed at making the justice system more effective, flexible, and efficient. However, doubts remain whether these reforms will tackle the system's ethical and transparency failings. As part of its effort to promote transparency in the Czech Republic, Post is working with the Ministry of Justice, several European Embassies, and the business community on organizing a conference in September to address the critical issues of judicial independence, ethics and transparency, drawing on U.S. and West European judicial experience. End Summary.

POLITICS AND JUSTICE: A BAD MIX

[1](#)2. (C) Several recent legal cases have drawn attention to a number of persistent problems in the Czech justice system, including a lack of transparency and political interference. Last October, the Supreme State Prosecutor decided not to prosecute Deputy Prime Minister Jiri Cunek, who was accused of corruption (Ref A). The Cunek investigation was accompanied by intense media scrutiny and widespread public perception that the case had been decided not on merit but through political pressure. More concerns were raised when the Supreme State Prosecutor recalled a number of high level officials who wanted to bring Cunek to court. As a result, the "closed" Cunek case has generated several other legal disputes, which have underscored the problems of political interference and a lack of transparency in the Czech justice system. The Cunek investigation and related cases also continue to raise tensions within the Topolanek coalition government. In a recent meeting with Ambassador Graber, the Chief Justice of the Supreme Administrative Court, Joseph Baxa, stated that Czech politicians have now realized that a functioning system of justice could be "uncomfortable" for them, and as a result, the politicians are now "focused on changes that would allow them to reach into the system" to achieve desired results.

[1](#)3. (C) In another case with similar political overtones, President Klaus recalled the Chief Justice of the Supreme Court, Iva Brozova, two years ago. Brozova, a well-respected judge, did something completely unexpected - she took President Klaus to court. The Constitutional Court eventually ruled in favor of Brozova, and reinstated her to the Supreme Court. Brozova summed up her victory to emboff in a July 15 meeting: "It is good that the judicial branch

confronted the political power at court, and the Constitutional Court was able to limit the expansion of the executive power."

14. (C) Chief Justice of the Constitutional Court, Pavel Rychetsky, recently told emboff that the Brozova vs. Klaus case badly divided his court, and this division remains. Indeed, if recent cases are any guide, politics may have become a factor in the Constitutional Court's deliberations on politically controversial cases, such as those concerning the current government's social reforms. Eliska Wagnerova, a Deputy Chief Justice of the Constitutional Court, admitted to emboff that the Court's recent deliberations and decisions were characterized more by the majority steamrolling over the minority, rather than by genuine legal arguments and attempts to find consensus.

PERSISTENT PERSONNEL AND EDUCATION PROBLEMS

15. (SBU) The justice system also continues to be burdened by judges and law school professors tied to the old Communist regime. During the Communist era, over 50 percent of the judges were members of the Communist Party, according to Judge Vojtech Cepl, who has become a leading voice calling for reform. Although many judges with ties to the Communist Party were removed from their positions, many remained in place largely out of necessity. The reforms and rapidly changing business environment of the 1990,s generated many new legal disputes, which the justice system was not equipped to handle. The shortage of judges was gradually addressed by increased hiring, but many of the new entrants, who were

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rushed into the profession, were poorly prepared for the job.

16. (SBU) Education in the country's several law schools has been repeatedly criticized. Despite the establishment of new law schools in the 1990,s, many continue to rely on old-guard lecturers who force their students to memorize rather than learn through case studies, analysis, and critical thinking. Chief Justice Rychetsky told emboff: "The lecturers are mainly pre-1989 law professors. The key problems of young judges and lawyers are a lack of good education, professionalism, and interpersonal skills. The new generation of lawyers is badly prepared for their jobs."

17. (SBU) Embassy's interlocutors also expressed a concern that the recent DPM Cunek-related cases may lead some of the younger legal professionals to follow the wrong role models. Another problem for younger judges has been the lack of potential for advancement. At present, pensions are small and there is little incentive for more senior judges to retire. "If judges' pensions were increased by at least 40 percent, old judges would be willing to retire and make room for the young generation of judges," Supreme Court's Brozova noted.

SYSTEMIC PROBLEMS ALSO A BURDEN

18. (C) According to Judge Cepl, the position of the Ministry of Justice remains problematic, since the Ministry appoints and recalls state prosecutors. Furthermore, judges and prosecutors are paid by the Ministry of Justice. "This is a challenge to the independence of the judiciary," Judge Cepl told emboff. Lenka Bradacova, President of the Union of Prosecutors concurred, noting that judges have been struggling - so far unsuccessfully - to introduce their own administrative body that would control courts and have its own budget.

JUDICIAL REFORM

19. (SBU) Since 1990, there have been 13 Justice Ministers,

many of whom tried to reform the country's judicial system, but with little success. The current Justice Minister, Jiri Pospisil (ODS), has focused on updating the civil, criminal, and business codes, as well as on introducing new efficiencies into the judicial process. A government bill on courts and judges has recently been passed in both Houses of Parliament and is waiting for President Klaus' signature. Some elements of this bill would strengthen the powers of the Justice Minister vis-a-vis the courts. Minister Pospisil is also considering introducing time limits for senior court officials.

¶10. (C) Leading judges are divided on the impact of these reforms. Supreme Court Justice Brozova criticized Pospisil's agenda, which she views as an attempt by politicians to exert their influence over the judicial system. On the other hand, Supreme Administrative Court's Baxa considers the reforms a step in the right direction. However, Baxa, Brozova, and other respected legal experts agree that transparency and independence of the courts, which are a key public concern and a cornerstone of any democratic system, do not figure high on Pospisil's agenda. Former Justice Minister and current Ombudsman for Public Rights, Otakar Motejl, recalled in a recent meeting his efforts in the late 1990's to increase the independence of the court chairmen. "Pospisil's reforms do not envision such a change, which is badly needed," Motejl told emboff.

COMMENT

¶11. (C) In discussions with numerous judicial officials and legal experts, including all three chairmen of the country's highest courts, the Embassy has heard a unanimous call for more far-reaching reforms. The reforms introduced by the current government should help make the courts more efficient, but they skirt around the edges of the most important issue: ensuring that judicial independence and transparency are the hallmarks of the Czech justice system. It remains to be seen whether the current government, which has made economic and social reforms a priority, will be able to take on this challenge. Justice Minister Pospisil (ODS) does not have a strong base of support within his party or the cabinet. During a recent meeting with Ambassador Graber, Pospisil indicated that he may not be in his job for long. Although no cabinet reshuffle is expected in the near future, Pospisil's fears about his future may further curtail his ability and willingness to take on the truly tough reforms.

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¶12. (C) Several observers have told us that a real reform of the justice system will be a generational task and will require a concerted effort on the part of successive governments, judges, and legislators. Even more importantly, the effort will require persistent media and public pressure.

As Supreme Court's Brozova noted: "A genuine judicial reform is unthinkable unless the way of (Communist) thinking is changed. As long as top judicial positions are filled with old guard judges, nothing can be reformed." To initiate a constructive discussion on these themes, post plans to organize an international conference in September 2008, in cooperation with the Ministry of Justice, European embassies, and the business sector. This conference follows up on the successful transparency conference, which post hosted in September 2007 (Ref B).

Thompson-Jones